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2 **COMMENT**

3 Claims 1-26 were filed in the case. Claims 3, 6, 19-14, 16-23 and 26 have been amended,
4 and claims 27-35 have been added. Claims 1-26 remain in the case.

5 Please find attached a Credit Card Payment form in the amount of \$169.00 to cover the
6 fee associated with the new claims 27-35.

7 Newly added claim 27 could be construed to be a generic apparatus claim, and claims 32
8 may be considered to be a generic method claim, both believed covering the Examiner's
9 asserted Species 1-3 as indicated in paragraph 3, page two of the restriction requirement
10 dated 09/30/2004.

11 Accordingly, Applicant requests examination of claims 27, 32 and the remaining claims
12 1-35.

13 If the Examiner refuses examination, in order for comply with Restriction Practice,
14 Applicant responds to the Restriction Requirement as follows.

15 **RESTRICTION RESPONSE**

16 Applicant respectfully requests reconsideration of the requirement of restriction, for
17 reasons set forth above and as follows.

18 As indicated in the MPEP at 808.02:

19 "Where the related inventions as claimed are shown to be distinct under
20 the criteria of MPEP 806.05(c - I), the examiner, in order to establish reasons
21 for insisting upon restriction, must show by appropriate explanation one of the
22 following:

23 (1) Separate classification thereof:

24 This shows that each distinct subject has attained recognition in the art as a
25 separate subject for inventive effort, and also a separate field of search.
26 Patents need not be cited to show separate classification.

27 (2) A separate status in the art when they are classifiable together:

28 Even though they are classified together, each subject can be shown to
29 have formed a separate subject for inventive effort when an explanation

1 indicates a recognition of separate inventive effort by inventors. Separate
2 status in the art may be shown by citing patents which are evidence of such
3 separate status, and also of a separate field of search.

4 (3) A different field of search:

5 Where it is necessary to search for one of the distinct subjects in places
6 where no pertinent art to the other subject exists, a different field of search is
7 shown, even though the two are classified together. The indicated different
8 field of search must in fact be pertinent to the type of subject matter covered
9 by the claims. Patents need not be cited to show different fields of search.

10 Where, however, the classification is the same and the field of search is
11 the same and there is no clear indication of separate future classification and
12 field of search, no reasons exist for dividing among related inventions."

13 In the present case, it is submitted that the claims of the present application relate to a
14 common inventive effort, and would not require separate, distinctive fields of search;
15 classification of the claimed invention as set forth in claims 1-26, including Species 1-3 as
16 cited by the Examiner, are believed to comprise the same class and related sub-classes, as
17 well as common apparatus so as to provide a common field of search for prosecution
18 purposes.

19 It is the Examiner's burden to set forth with particularity appropriate criteria applying the
20 statutory requirements, and the evidence to support that application of the criteria. A
21 restriction requirement imposes considerable cost and time burdens on the applicant, and
22 should not be taken lightly or required without substantial evidence of necessity for that
23 application.

24 As stated in MPEP 806.05(c): "If there is no evidence that combination A Bsp is
25 patentable without the details of Bsp , restriction should not be required. Where the
26 relationship between the claims is such that the separately claimed subcombination Bsp
27 constitutes the essential distinguishing feature of the combination A Bsp as claimed, the
28 inventions are not distinct and a requirement for restriction must not be made, even though
29 the subcombination has separate utility."

30 It is respectfully submitted that no such evidence has been shown, and as such, as stated
31 above, "restriction should not be required."

32 The new independent claims 27 and 32 illustrate the similarities in the cited groups of
33 claims cited by the examiner, and may be construed reading upon the inventions defined in
34 said claims. The Examination of the claims should not present an undue burden upon the

1 Examiner, and reconsideration of the Restriction Requirement is thus respectfully requested.
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3 In the alternative, if the Examiner is still unwilling to Examine all of the claims, the
4 applicant with traverse elects Species 1, the heat pipe embodiment, claims 1-9 and 24, 28,
5 and 33.

6 The Specification has been amended to further reference related applications in
7 addition to those earlier added, as suggested by the Examiner.
8

9 It is now believed that the claims are in condition for allowance, and applicant hereby
10 respectfully requests same.
11

12 If additional issues remain, and the Examiner is of the opinion that same could be
13 resolved by telephone or examiner amendment, the undersigned respectfully requests same at
14 (985) 845-0000.
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17 Respectfully submitted,
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27 CERTIFICATE OF FAX TRANSMISSION
28

29 I HEREBY CERTIFY that the present document was faxed to the US Patent Office to central
30 fax number 703 872-9306 this 302 day of OCTOBER,
31 2004.

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34 Joseph T. Regard (PTO Reg 34,907)
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